IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 276 OF 2001

Gurudas R. Naik,
major of age,
Indian National,
residing at H.No.151,
Siridao, Palem, Ilhas,
Goa. ... Petitioner

versus

1. State of Goa,
through the Secretary
P.W.D., Secretariat,
Panaji, Goa.

2. Chief Engineer,
P.W.D. with office at
P.W.D. Building,
Altinho, Panaji, Goa.

3. Prakash B. Pednekar,

4. Santosh B. Pednekar,

5. Ramnath B. Pednekar,

6. Atmaram B. Pednekar,

7. Mohanrao B. Pednekar,

All r/o Portais,
Panaji, Taluka Tiswadi,
Goa. ... Respondents

Mr. J. E. Coelho Pereira, Senior Counsel with Mr. V. Korgaonkar, Advocate for the Petitioner.

Mr. G. V. Tamba, Additional Government Advocate for Respondent Nos.1 and 2.

Mr. S. D. Lotlikar, Senior Counsel with Miss S. Dessai, Advocate for Respondent Nos.3 to 7.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.

DATE OF RESERVING
THE JUDGMENT :28TH MARCH,2004
DATE OF PRONOUNCING
THE JUDGMENT :6TH MAY,2004.

JUDGMENT(PER P. V. HARDAS, J.)

This Petition, ostensibly in public interest, has been filed by the Petitioner seeking for issuance of a writ for quashing the decision of Respondent Nos.1 and 2 to reconvey plot bearing Chalta No.31(Part 1) of P.T. Sheet No.105 in favour of Respondent Nos.3 to 7 and for quashing the Deed of Reconveyance dated 23rd November, 2000. The Petitioner has also prayed for issuance of a writ of mandamus ordering the Respondent Nos.1 and 2 to take possession of the said land from Respondent Nos.3 to 7.

2. The facts as are necessary for the decision of this Petition are stated hereunder:-

The Government initiated proceedings for acquisition of land admeasuring 168 sq. metres comprising of portion of the property bearing Chalta No.31A of P.T. Sheet No.105 situated at Fontainhas, Mala, Panaji, for laying the distribution pipeline of 100 mm diameter for supplying water from the Altinho Reservoir to the Patto area and other parts of Panaji. The first Respondent had acquired this land, along with other stretches of land, from one late Shri Babuli Pednekar. The Notification under Section 4 for the

acquisition of the land was issued on 4th February, 1977 and was published in the Government Gazette dated 17th March, 1977. A declaration under Section 6 of the Land Acquisition Act was issued dated 12th July, 1977, which, was published in the Government Gazette dated 21st July, 1977. In furtherance of the various other steps for the acquisition of the land, an Award was made by the Land Acquisition Officer dated 31st October, 1977, awarding compensation of Rs.7,314/- for the acquisition of the land admeasuring 168 sq. metres. The price offered by the Land Acquisition Officer for acquisition of the said land was Rs.30/- per sq. metres. It appears that the original owner Shri Babuli Pednekar, filed a reference for enhancement of the compensation and the learned Additional District Judge, Panaji, enhanced the rate to Rs.150/- per sq. metre, awarding solatium and interest as permissible under the Land Acquisition Act. The enhanced compensation worked out to Rs.19,112/-. It appears that the difference in the compensation awarded by the Land Acquisition Officer and enhanced by the learned Additional District Judge, Panaji, amounting to Rs.11,718/-, though deposited in the Court was not collected by the owner and as such remained unpaid.

3. The Government decision of laying pipeline for which the said land admeasuring 168 sq. metres

came to be acquired, was abandoned because of land slide which occurred in 1991-1992 on account of heavy rains and also as it was realised that laying of new pipeline was not possible due to the steep slope of the hill. The Government also felt that had the old pipeline been reinstalled, there was every possibility of accident endangering human life and causing damage to the houses in the neighbouring area. Accordingly, therefore, Respondent Nos. 3 to 7, who are the heirs of the original owner requested for reversion of the said land admeasuring 168 sq. metres as the land was not suitable for the public purpose for which it was acquired. The Government took a decision of reverting the said land to the heirs of late Shri Babuli Pednekar on the condition that the compensation received/awarded to them is refunded back to the Government with interest at the rate of 15% per annum. This amount was worked out to Rs.32,448/- and the said amount was duly received by the Government on 8th November, 2000, vide receipt No.96 for Rs.31,606/- and vide receipt No.37 dated 24th November, 2000 for Rs.842/-. A Deed of Reconveyance came to be executed on 9th July, 2001, reconveying the said land admeasuring 168 sq. metres in favour of the Respondents/heirs of late Shri Babuli Pednekar. The Deed of Reconveyance was registered on 19th July, 2001, in the Office of the Sub-Registrar.

4. The Petitioner meanwhile, by his letter dated 25th May, 2001, sought information from the second Respondent concerning the said plot of land admeasuring 168 sq. metres, as the Petitioner learnt that the said land was agreed to be reconveyed in favour of Respondent Nos.3 to 7. Respondent No.2 by his letter dated 25th June, 2001, furnished the necessary documents sought for by the Petitioner.

5. According to the Petitioner, the action of Respondent Nos.1 and 2 in reconveying the land to Respondent Nos.3 to 7 is against law and against public interest and in fact in detriment to the Ex-chequer. The Petitioner also states that the said land was a frontage and access to the rear portion of the remaining land vesting in the Government and as such, by reconveying the said land access to the other portion would be denied. It is also stated in the Petition that the Government has reconveyed the land to Respondent Nos.3 to 7 flouting all rules in respect of disposal of the land which vested in the Government. It is also urged in the Petition that the documents annexed by the Petitioner do not show that the Government has taken a decision regarding reconveying the land to Respondent Nos. 3 to 7.

6. Respondent Nos. 1 and 2 have filed the

Affidavit of Shri Arvind A. Patil, Executive Engineer in the Public Works Department. In the said Affidavit, an objection is taken that the Petitioner has not been able to demonstrate how this Petition is filed in public interest. It is also stated that the decision to reconvey the land acquired by the Government is a Government decision. The Affidavit then sets out the facts which have been adverted to by us in the earlier part of the Judgment.

7. Respondent Nos.3 to 7 have filed the Affidavit through Respondent No.3, Prakash B. Pednekar. It is alleged by the Respondents that the Petitioner is put forth by one Ramesh Silimkhan who is an immediate neighbour and who had been "eyeing" this piece of land admeasuring 168 sq. metres. It is also stated that the said person had done his utmost to obstruct reconveyance of the land. It is further stated in the Affidavit that the land admeasuring 168 sq. metres has the shape of a quadrilateral. By acquisition of the said land, the remaining portion of the land surveyed under Chalta No.31 belonging to the Respondents was rendered useless for any purpose. This land is on a steep gradient and is subject to frequent land slides thus rendering it impossible to utilize the land for public purpose for which the land was acquired. It is also stated that the enhanced

compensation was never received by the original owner or his heirs. The Respondents also denied that on account of reconveyance of the said land, access to the remaining land possessed by the Government is denied. The Petitioner filed his rejoinder and has contended that the decision of the Government regarding reconveyance of the land is a colourable exercise of power as the land which was once acquired could only be disposed of by public auction. In the rejoinder, it is stated that the Petitioner being concerned as a citizen has filed the Petition in public interest.

8. Mr. J. E. Coelho Pereira, learned Senior Counsel appearing on behalf of the Petitioner has urged before us that the certified copies of the notings of the file reveal that there is no decision of the Government in respect of reconveyance of the land. He has further sought to urge that even if a decision has been taken, it is not a decision as per the provisions of the Business Rules. At the threshold, according to us, this submission is not tenable. The Affidavit filed on behalf of the Government clearly discloses that the Government has taken a decision for reconveyance of the land to Respondent Nos.3 to 7. The Reconveyance Deed on behalf of the Government has been executed on 9th July, 2001. This is a duly registered document. According to us, it would be wholly and

impermissible exercise for this Court to examine the numerous files and the various notings therein and attempt to decipher if the decision taken is a decision of the Government. The documents and the Affidavit on the face of it disclose that the Government has taken a decision and, therefore, according to us, it would not be permissible for us especially in a public interest litigation, and especially when the Government reiterates its decision, to minutely scan the documents for ascertaining whether the decision taken is the decision of the "Government".

9. Mr. Coelho Pereira, learned Senior Counsel appearing on behalf of the Petitioner has next urged that once the land is acquired, the acquired land vests in the Government free from all encumbrances and, therefore, the Government cannot dole out largesse by way of reconveyance of this land. If, the Government was not interested in retaining the said land, the Government ought to have disposed of the land by public auction. According to the learned Senior Counsel appearing on behalf of the Petitioner, the Petitioner in his Petition, has stated that the said land would have fetched about Rs.3000/- per sq. metres and by reconveying the said land at a pittance, the State Ex-chequer is deprived of sizable amount of revenue which otherwise would have been earned had the land

been put to public auction.

10. In support of his submission, Mr. Coelho Pereira, learned Senior Counsel appearing on behalf of the Petitioner has placed reliance on a Judgment of the Apex Court in **Ram and Shyam Company** v. **State of Haryana and others** reported in (1985) 3 SCC 267. In this case, an auction was held for the grant of lease for winning mining minerals. The bid of the Appellants before the Supreme Court, being highest was accepted by the Presiding Officer conducting the auction but was not confirmed by the State Government which directed a fresh auction to be held. In the subsequent auction again the bid of the Appellant before the Supreme Court, which was the highest and which was accepted by the Presiding Officer was not confirmed by the State Government. The Respondent No.4 before the Supreme Court by a letter addressed to the Chief Minister complained of a syndicate being formed and the monopolists/bidders being assisted by goondas and anti-social elements. In the letter, the fourth Respondent made an offer for the Award of contract for a period of five years and on the basis of the said letter the contract in fact came to be awarded. That was the subject matter of challenge in the proceedings before the Apex Court. In that background, therefore, the

Apex Court in paragraph 12 of the Report held as under:-

> "Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficient activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of

> the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy".
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> "A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State".
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> "The law is now well-settled that the Government need not deal with anyone, but if it does so, it must do so fairly and without discretion and without unfair procedure. Let it be made distinctly clear that respondent 4 was not selected for any special purpose or to satisfy any Directive Principles of State Policy. He surreptitiously ingratiated himself by a back-door entry giving a minor raise in the bid and in the process usurped the most undeserved benefit which was exposed to the hilt of the court. Only a blind can refuse to perceive it".

11. Mr. Coelho Pereira, learned Senior Counsel appearing on behalf of the Petitioner further drew our

attention to the Judgment of the Apex Court in **State of Kerala and others** v. **M. Bhaskaran Pillai and another** reported in JT 1997(6) S.C. 22. The Supreme Court in the aforesaid Judgment in paragraph 4 has held as under:-

> "The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value".

12. Mr. Coelho Pereira, learned Senior Counsel appearing on behalf of the Petitioner has further relied on a Division Bench Judgment of this Court in **Bhupal Anna Vibhute** v. **Collector of Kolhapur and others** reported in 1996(3) Bom.C.R. 717. The Division Bench of this Court in the aforesaid Judgment has held that when the State is to dispose of its property, the normal rule is that it should be disposed of by public auction as that would bring in the highest revenue. The Division Bench then held that the reasons of the Government for granting land to the Respondent therein was not justified.

13. The Petitioner has averred in the present Petition that the market rate of the land, which was reconveyed to the Respondents was not less than Rs.3000/- per sq. metre considering the situation of the land which was abutting a public road. The said land admeasuring 168 sq. metres was acquired and the Land Acquisition Officer, on the date of the issuance of Section 4 Notification i.e. in February, 1997, had assessed the market value of the land at the rate of Rs.30/- per sq. metre. The learned Additional District Judge in reference had assessed the value of the land at the rate of Rs.150/- per sq. metre. Assuming that due to the passage of time and the spurt on building activity, there is likely to be spurt in the value of the land, however, according to us, the

claim of the Petitioner that the value of the land was Rs.3000/- per sq. metre tasks human credulity for acceptance. Moreover, the Petitioner has not annexed the report from any surveyor nor is the assessment based on any rational sale instances but is a mere ipse dixit, which we are not inclined to accept. According to us, this assumes importance in view of the fact, that whether by reconveyance of the land to the Respondents, the State Ex-chequer has been deprived of considerable amount of revenue which it would have otherwise earned had the land been put to public auction. The papers were made available by the Respondents which contained the Award of the learned Additional District Judge in reference. The learned Additional District Judge while assessing the market value of the land relied on the evidence of Pramod Dessai/Architect/Engineer who in his report had stated that the acquired land assumes the shape of an irregular trapeze. The Northern boundary of this trapeze was passing very close to the structural house of the owners on the South-East and North-East direction. The learned Judge deciding the reference, therefore, agreed that the land available to the owners after the acquisition became absolutely useless and no expansion of the house by the owners was possible.

14. The land which is reconveyed to the

Respondents is admeasuring 168 sq. metres. It is irregularly shaped having no construction potential. It is undisputed before us that the minimum area of plot which is required for development is 200 sq. metres. The land which is reconveyed is admeasuring only about 168 sq. metres. The Respondents have annexed the sketch of this land which is reconveyed and surveyed at Chalta No.31/A and on perusal of the same, according to us, no construction at all is possible on this irregular shaped land. The land is also undisputedly situated on a gradient and is subject to land slides. It appears that apparently, due to frequent land slides especially during monsoon the laying of the pipelines for which the land was acquired, was abandoned. Adjacent to this reconveyed land is the land of the Respondent Nos.3 to 7. There are no vacant plots lying close to this reconveyed land in which this land could be merged to enlarge a vacant plot.

15. Mr. S. D. Lotlikar, learned Senior Counsel appearing on behalf of Respondent Nos.3 to 7 has invited our attention to the Goa, Daman & Diu Land Revenue(Disposal of Government lands) Rules, 1971. Rule 25 contemplates that the occupancy rights in business sites shall be disposed of by the Collector by public auction to the highest bidder unless for reasons

to be recorded in writing, the Collector thinks that in any particular case, there is good reason for granting the land without auction. Sub-Rule 3 of Rule 25 further provides the manner of determining the occupancy price. While determining the occupancy price (1) the sale prices of similar lands in the locality; (2) the situation of the building site; (3) the supply of and demand for similar lands and (4) factors which are taken into account in determining the value of land under the Land Acquisition Act, 1894, should be taken into consideration. Rule 35 further gives discretion to the Collector to grant small strip of land vesting in the Government which is adjacent to occupy unalienated building site and which cannot be reasonably disposed of as a separate site to grant such strip to the holder of such site on the same tenure on which he holds that site subject to the person agreeing to pay the adjacent or assessment or rent as the Collector deems adequate.

16. Thus, undoubtedly when land which is vesting in the Government which is sought to be disposed, has to be disposed of by a public auction. The Government has to act fairly and the endeavour should be to augment the resources. Public auction affords an opportunity to persons who are interested in bidding for the same. In the present case, admittedly, by a

Government decision, the land which was acquired was reconveyed back to the original owners. We have, therefore, to test the decision of the Government in reconveying the land and the adequacy of the consideration for reconveyance.

17. We have referred to the situation of the land which is on a gradient subject to frequent land slides at least in the monsoon season. It was because of the land slides that the purpose for which the land was acquired was abandoned by the Government. The land is a narrow strip of land admeasuring 168 sq. metres. It has an awkward shape rendering it unsuitable for any development activity. The smallness of the land also rendered it unsuitable for development activity as the minimum area of land for development is 200 sq. metres. Undisputedly, there are no other large tracks of land which are vacant and adjacent to this land. This land, therefore, cannot merge in the larger areas but can be sold only as a separate and independent site. Because of the acquisition of this land the remaining land of the owners i.e. Respondent Nos.3 to 7 has been adversely affected as the owners cannot carry out any expansion of their dwelling houses. This is so held by the learned Additional District Judge while deciding the reference. The land acquired and now reconveyed is the land originally belonging to

Respondent Nos.3 to 7. The Government has consistently held that this land is not fit for development.

18. According to us, in view of the factors noted by us above, the action of the Government in not disposing of the land by public auction which it ordinarily ought to have done so, has not been actuated by any desire to show any favour or dole out largess to Respondent Nos.3 to 7 but has been actuated out of a sense of fair play in reconveying the land back to the owner, a land which the Government did not require and a land because of its smallness in size and awkward shape is incapable of being utilized for building purpose.

19. We do not see any mala fides nor can we judge the exercise of the Government as a colourable exercise of power. May be, in a given case, the land ought to have been put to public auction. A large plot which is independently capable of being developed certainly ought and has always to be disposed of by a public auction. But in the peculiar facts of the case, according to us, the decision of the Government in reconveying the land can be justified, at least no mala fides can be alleged. Reconveyance Deed has been executed in July, 2001 and nearly three years have passed. Possession has also been handed over to

Respondent Nos.3 to 7 and though, no doubt the Petitioner had promptly filed the Petition, the fact remains that by quashing the decision of reconveying the land and by declaring the Reconveyance Deed as null and void, this Court would be unsettling the possession. We are extremely doubtful in the peculiar factors whether the land would fetch a mighty sum if put to public auction and by not putting it to public auction the Government has been denied a sizable chunk of revenue. Therefore, according to us, despite the fact that the land was not disposed of by a public auction but in view of the provisions of the rules referred to by us which permit the disposal of the land otherwise then by public auction, we deem it fit not to interfere to grant the prayers to the Petitioner in the peculiar facts of the case.

20. That takes us to the consideration for reconveyance. Reconveyance has been ordered on the refund of the compensation paid by the Land Acquisition Officer to the original owner i.e. on refund of Rs.7,314/-. Undisputedly, the Reference Court had determined the market value of the land at Rs.150/- per sq. metre. Though, this enhanced compensation was deposited by the Government it was never claimed by the original Respondents. The conveyance at the rate of 15% interest on the said amount of Rs.7,314/- works out

to Rs.32,448/-. According to us, the Government should have insisted as a condition for reconveyance that the Respondents pay Rs.150/- per sq. metre with interest. Since, this is a Petition in public interest, we are sure that the anxiety of the Petitioner in ensuring that the Government is not deprived of revenue and the keen desire to augment the resources of the Government, would be satisfied by this Court directing the Government to call upon Respondent Nos.3 to 7 to pay an amount of Rs.120/- per sq. metre to the Government i.e. the enhanced compensation as determined by the learned Additional District Judge in reference, minus the compensation which is already refunded. The Land Acquisition Officer had awarded compensation at the rate of Rs.30/- per sq. metre while the learned Additional District Judge had determined the market value at the rate of Rs.150/-.

21. We, therefore, direct the Government to recover an amount of Rs.120/- per sq. metre with interest at the rate of 9% per annum from the date of Reconveyance Deed till the payment from Respondent Nos.3 to 7. In the event, Respondent Nos.3 to 7 do not voluntarily pay the amount, the Government may recover it as arrears of land revenue.

22. With the aforesaid direction, Writ Petition

No.276 of 2001 is disposed of with no order as to costs.

P. V. HARDAS, J.

D. G. KARNIK, J.

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